

EXHIBIT B

1 UNITED STATES DISTRICT COURT 00:00:59
2 CENTRAL DISTRICT OF CALIFORNIA
3
4 MOOG INC.,)
5)
6 Plaintiff,) 00:00:59
7)
8 vs.) Case No.
9) 2:22-cv-09094-GW-MAR
10 SKYRYSE, INC., ROBERT ALIN)
11 PILKINGTON, MISOOK KIM, and)
12 DOES NOS. 1-50,)
13)
14 Defendants.)
15 _____)
16) 00:00:59
17 SKYRYSE, INC.,)
18)
19 Counterclaimant,)
20)
21 vs.)
22)
23 MOOG INC.,)
24)
25 Counterdefendant.)
_____) 00:00:59

VIDEO-RECORDED DEPOSITION OF
NIKOLAUS BAER
Tuesday, May 2, 2023
Volume I
*** CONFIDENTIAL - ATTORNEYS' EYES ONLY ***
Reported by:
CARLA SOARES
CSR No. 5908
Job No. 5886299
Pages 1 - 100

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOOG INC.,)
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Plaintiff,)
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vs.) Case No.
) 2:22-cv-09094-GW-MAR
SKYRYSE, INC., ROBERT ALIN)
PILKINGTON, MISOOK KIM, and)
DOES NOS. 1-50,)
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Defendants.)
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SKYRYSE, INC.,)
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Counterclaimant,)
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vs.)
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MOOG INC.,)
)
Counterdefendant.)
-----)

VIDEO-RECORDED DEPOSITION OF NIKOLAUS
BAER, Volume I, taken on behalf of Plaintiff and
Counter-Defendant Moog Inc., beginning at 1:14 p.m.,
and ending at 4:35 p.m., on Tuesday, May 2, 2023,
before CARLA SOARES, Certified Shorthand Reporter
No. 5908.

1 APPEARANCES VIA VIDEOCONFERENCE:

2

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17 650.328.4600

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19

20

21 ALSO PRESENT: Keigo Painter, Video Operator

22

23 --o0o--

24

25

1 sense of it. 13:30:50

2 And does your declaration evaluate whether
3 any Moog documents as a whole are public?

4 A I mean, I think, as it states here, I
5 evaluated Mr. Pixley's and Mr. Crozier's 13:31:10

6 methodology, and that they didn't sufficiently --
7 they didn't provide a sufficient basis for whether a
8 document was Moog's non-public information or not.

9 And in doing so, I didn't -- I didn't
10 evaluate what a document, to be a public document or 13:31:28

11 not a public document, was. I looked at the
12 contents of documents and found that there were many
13 instances of public information used within the
14 documents and that, therefore, they didn't provide a
15 sufficient basis for their conclusions. 13:31:44

16 Q Can you please go to paragraph 5. And
17 review that paragraph, and let me know when you're
18 done.

19 A Okay.

20 Q So if you go to the top of page 3, which 13:32:46
21 is where paragraph 5 ends, and you see at the top,
22 there's a phrase, "belong to Moog."

23 And I assume you saw that phrase as you
24 reviewed the entire paragraph. What does it mean to
25 you for a document to "belong to Moog"? 13:33:04

1 A Well, again, I'm not providing a legal 13:33:43
2 definition there. And what I'm responding to there
3 is the assumption by Mr. Crozier and Mr. Pixley --
4 or the apparent assumption -- that documents --
5 certain documents did belong to Moog. 13:33:58

6 And so I'm referring to that one cannot
7 simply assume that something would belong to Moog,
8 and I'm not providing a legal interpretation of what
9 that would mean.

10 But there were things, and I have many 13:34:21
11 examples of documents that originated outside of --
12 outside of Moog, either in the public domain or by
13 people outside of their employment with Moog.

14 And those were some things that I
15 considered as not belonging to Moog, or at least 13:34:41
16 considered as items that Mr. Crozier and Mr. Pixley
17 did not account for in their methodology.

18 Q What do you mean by "documents that
19 originated outside of Moog"?

20 Do you provide -- sorry. Let me start 13:35:01
21 over.

22 Do you provide an evaluation in your
23 declaration as to whether a document as a whole from
24 Moog originated outside of Moog?

25 MR. GROSS: Objection. Vague. 13:35:15

1 THE WITNESS: No. I'm, again, talking 13:35:22
2 about the contents of documents being connected or
3 being from the publicly available sources; documents
4 that I saw that were available before
5 Mr. Pilkington's employment, what I understood to be 13:35:42
6 his employment at Moog, different -- different
7 files.
8 So I didn't -- I'm not necessarily
9 evaluating that on a -- as an entire document basis,
10 but there were connections and contents that were 13:35:58
11 available in the public domain and that I saw in
12 sources that were -- that I understood to be, yes,
13 in the public domain or originated before
14 Mr. Pilkington began his employment at Moog.
15 BY MS. YIP: 13:36:23
16 Q Do you provide any opinions in your
17 declaration as to whether or not a document as a
18 whole belongs to Moog?
19 MR. GROSS: You should feel free, if you
20 need to to answer any of her questions, to refer to 13:36:42
21 the declaration.
22 THE WITNESS: Thank you.
23 BY MS. YIP:
24 Q If it's going to take you a while, we can
25 return to the question more towards the end, when 13:37:50

1 we've gone through a bit of your declaration. 13:37:52

2 A Okay.

3 Q We'll come back to it.

4 So I'd like to refer you to paragraph 6.

5 Can you please read to yourself the last 13:38:07

6 sentence of paragraph 6?

7 MR. GROSS: Lai, I notice that 6 looks

8 like it's broken down into some subparagraphs. Are

9 you intending to direct him to one?

10 MS. YIP: Oh, right. Just the 6a. Thank 13:38:27

11 you.

12 THE WITNESS: Okay.

13 BY MS. YIP:

14 Q What are the bases for your opinion that

15 Skyryse is no longer using SDTE? 13:38:49

16 A So as I state here in 6a, I reviewed

17 Skyryse's current source code. So I reviewed what I

18 understood was updated source code, according to

19 what had been produced previously by Skyryse for

20 Mr. Crozier's review, and, yes, updated -- reviewed 13:39:13

21 updated versions of what had been previously

22 produced, and was able, in reviewing that, to

23 confirm that there was no SDTE code as stated in

24 here.

25 Q What updated version of the code did you 13:39:28

1 review? 13:39:30

2 A I received directories of updated source
3 code that I understood to be updates of what had
4 been previously provided, and I understood it to
5 have been, I guess, collected in April of this year. 13:39:46

6 Q So the updated versions that you reviewed
7 to confirm that Skyryse is no longer using SDTE were
8 collected in April of 2023?

9 A That was my understanding, yes.

10 Q Okay. And your understanding is that the 13:40:07
11 source code was the April 2023 version of the source
12 code?

13 A Yes. My understanding is it was the
14 April 2023 version of the source code directories or
15 the -- and that that was an update of what I 13:40:25
16 understood to have been previously provided, I
17 believe, to Mr. Crozier and Mr. Pixley.

18 Q Even if Skyryse is no longer using SDTE,
19 according to your investigation, is it possible that
20 Skyryse is still using documents derived from -- 13:40:51
21 documents taken from Moog?

22 MR. GROSS: Objection. Foundation, calls
23 for speculation.

24 THE WITNESS: I haven't considered that
25 question. I don't have -- I don't have -- I haven't 13:41:13

1 publicly available concepts, and that essentially 13:48:59
2 Mr. Crozier and Mr. Pixley didn't differentiate from
3 publicly available sources. And then I do point to
4 this example of lear.h, which was a pre-existing --
5 what I understand to be a pre-existing file. 13:49:12

6 Q You'd agree there's a difference between a
7 concept and source code, right?

8 A It depends on the context, but there could
9 be a difference, yes.

10 Q So I'm not asking you whether or not eRTOS 13:49:31
11 involves publicly available concepts. I'm asking
12 whether or not you've seen any publicly available
13 source code in eRTOS.

14 A So that wasn't something I looked for.
15 I -- it's the type of source code that involves a 13:49:57
16 lot of public domain and publicly available code, so
17 I didn't look for that in particular.

18 And I noted that neither Mr. Crozier or
19 Mr. Pixley looked for or differentiated what -- or
20 even really identified what the eRTOS code was and 13:50:17
21 didn't identify it as being something -- or the
22 files being something that wasn't available in the
23 public domain.

24 Q I'd like you to go to paragraph 6c, lines
25 25 through 26. 13:50:34

1 known. 14:17:41

2 So I don't think that that has been ruled
3 out, but there's -- there are -- it represents just
4 well-known information.

5 BY MS. YIP: 14:17:56

6 Q Is it your position that these paragraphs
7 under "Identification" and "System Overview" in the
8 sRTOS document was derived independently of the
9 eRTOS document?

10 MR. GROSS: Object to the extent it goes 14:18:11
11 beyond the scope of the parties' agreement as to the
12 deposition being limited to the declarations. I'll
13 object to the extent it calls for speculation as
14 well.

15 THE WITNESS: I don't think that's what I 14:18:33
16 just represented.

17 These are texts that are very connected to
18 what's in the public domain and represent what's in
19 the public domain and what's publicly known.

20 I don't -- I don't think Mr. Crozier 14:18:51
21 differentiated it from what's known in the public
22 domain.

23 BY MS. YIP:

24 Q Where in the public domain is this -- is
25 this exact text that's excerpted in 104? Where can 14:19:03

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1 it be found? 14:19:08

2 MR. GROSS: Foundation.

3 THE WITNESS: Again, the information

4 represents what's in the public domain. I recognize

5 it as what someone in this field would generally 14:19:22

6 know.

7 The exact text I haven't identified in the

8 public domain, but it's the type of description that

9 is of information that's well-known. And I don't

10 believe that it's been identified as -- or 14:19:41

11 designated as not being in the public domain. I

12 don't -- I don't have an identification of where it

13 is there at this time.

14 BY MS. YIP:

15 Q You reviewed the document it came from, 14:19:55

16 MOOG30814, right? You refer to it in your

17 declaration. The eRTOS design document is what I'm

18 referring to.

19 A Yeah, I reviewed exhibits. I understood

20 those to be -- those exhibits to be matching this 14:21:04

21 designation.

22 Q Okay. And do you have an opinion as to

23 whether or not this design document, bearing this

24 Bates number, is or is not public as a whole?

25 MR. GROSS: Vague as to "this document." 14:21:25

1 his answer. 15:35:42

2 MS. YIP: There's no question pending.

3 MR. GROSS: You asked him a question --

4 BY MS. YIP:

5 Q You're not being responsive to my 15:35:44

6 question.

7 I specifically said I'm not asking you
8 about the concept. So I withdraw the prior question
9 so that I can make it more clear to you.

10 I'm not asking you whether or not the 15:35:53

11 routine's concepts are available in the public

12 domain. I'm asking you whether or not you're aware

13 of this text, the actual code that's written here,

14 being in the public domain. I'm not asking about

15 concepts. 15:36:08

16 MR. GROSS: Just a second.

17 Object to the extent it's argumentative

18 and interrupted the witness while he was in the

19 middle of an answer.

20 You may answer the next question. If you 15:36:19

21 have anything you needed to finish saying, you're

22 free to do so.

23 MS. YIP: There was no question pending

24 before the one I just asked.

25 MR. GROSS: I disagree. I think the 15:36:28

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1 record will reflect otherwise. You interrupted the 15:36:29
2 witness in the middle of his answer. So if he'd
3 like to finish it, he has the opportunity to do so.
4 And then you may answer Ms. Yip's
5 question. 15:36:38
6 THE WITNESS: So I reviewed this file and
7 this function in response to Mr. Crozier's
8 declaration. He did not distinguish it from the
9 public domain.
10 I haven't identified this exact text in 15:36:51
11 the public domain, but the -- again, the general
12 concepts of this file are present in the public
13 domain. It even alludes to, in portions of this
14 file, the use of pulling from open source, and my
15 evaluation of this file and of its function is in 15:37:11
16 response to Mr. Crozier in that he failed to
17 consider or evaluate or identify the public domain
18 and the generally known concepts expressed in this
19 file.
20 MS. YIP: I'd like to enter as Exhibit 7 a 15:37:33
21 document bearing Bates No. SKY_IDS_0001654.
22 (Exhibit 7 was marked for identification
23 and is attached hereto.)
24 BY MS. YIP:
25 Q I'd like you to go to paragraph 58 of your 15:38:24

1 I, the undersigned, a Certified Shorthand 16:36:08
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; 16:36:08
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is 16:36:08
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested. 16:36:08

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name. 16:36:08

21
22 Dated: May 8, 2023

23 Carla Soares

24
25 CARLA SOARES 16:36:08
CSR No. 5908

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